



August 30, 2000

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2000-3360

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138690.

The Texas Department of Criminal Justice (the "department") received a request for information regarding an identified inmate. Specifically, the requestor seeks a photograph of the inmate from his inmate file, and an "Inmate Intake Sheet (or whatever document TDCJ-ID uses for personal information, Full Name, Date of Birth, Next of Kin, etc.)." You state that the department has provided the requestor with the requested photograph. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.107, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.131(a) relating to department inmates states in pertinent part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

(b) Subsection (a) does not apply to:

- (1) statistical or other aggregated information relating to inmates confined in one or more facilities operated by or under a contract with the department; or
- (2) information about an inmate sentenced to death.

The submitted information is about an inmate who is confined in a facility operated by the department, and who we assume has not been sentenced to death.¹ Moreover, subsection (b) of section 552.131 does not apply to the submitted information. However, section 552.029 provides:

Notwithstanding Section 508.313 or 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.029:

- (1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;
- (2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;
- (3) the offense for which the inmate was convicted or the judgment and sentence for that offense;
- (4) the county and court in which the inmate was convicted;
- (5) the inmate's earliest or latest possible-release dates;
- (6) the inmate's parole date or earliest possible parole date;
- (7) any prior confinement of the inmate by the Texas Department of Criminal Justice or its predecessor; or
- (8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Therefore, the department must release the inmate's full name under section 552.029. Furthermore, while section 552.029 does not require the release of an inmate's date of birth, it does require the release of an inmate's age. In this case, we believe the identified inmate's age is reasonably related to the request for the inmate's date of birth. *See* Open Records Decision No. 561 (1990) (requiring a governmental body to make a good faith effort to relate

¹You do not indicate that this inmate has been sentenced to death, and your argument under section 552.131 implies that he has not been sentenced to death since section 552.131 does not apply to death row inmates. *See id.*

a request to information which it holds). Therefore, the department must release the inmate's full name and age under section 552.029.

You assert that all of the submitted information is excepted from disclosure by sections 552.101 and 552.107(2) in conjunction with the decision in *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff'd in part and vacated in part*, 679 F.2d 1115 (5th Cir.), *amended in part*, 688 F.2d 266 (5th Cir. 1982). Section 552.107(2) states that information is excepted from required public disclosure if "a court by order has prohibited disclosure of the information." The *Ruiz* decision restricted the dissemination of "sensitive information" regarding inmates. The *Ruiz* final judgment, entered December 11, 1992, gave the Board of Criminal Justice (the "Board") authority to define the term "sensitive information." The Board met on January 21, 2000, and decided that "the term 'Sensitive Information' shall include all information regarding TDCJ-ID offenders not required to be disclosed pursuant to Section 552.029, Government Code." Thus, information in the categories delineated in section 552.029 of the Government Code is not excepted from required public disclosure by section 552.107(2) in conjunction with the *Ruiz* court order. Therefore, the information that is made public under section 552.029, the inmate's full name and date of birth, is not excepted from disclosure by sections 552.101, 552.107, or 552.131.

In conclusion, the department must release the identified inmate's full name and age under section 552.029. The remaining submitted information, the inmate's residential, family, and marital history, is excepted from required public disclosure under section 552.131.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

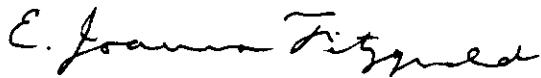
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/er

Ref: ID# 138690

Encl. Submitted documents

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